

1 THE HONORABLE JOHN C. COUGHENOUR  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 3M COMPANY,

11 Plaintiff,

CASE NO. C20-1096-JCC

12 v.

ORDER

13 AIME LLC, *et al.*,

14 Defendants.

15 This matter comes before the Court on Plaintiff's Motion for Summary Judgement (Dkt.  
16 No. 77), and Defendants' objections to the orders of the Honorable Brian A. Tsuchida, United  
17 States Magistrate Judge. (Dkt. Nos. 112, 122, 125.) Having thoroughly considered the parties'  
18 briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS  
19 Plaintiff's motion (Dkt. No. 77) and OVERRULES and/or strikes as moot Defendants'  
20 objections (Dkt. Nos. 112, 122, 125) for the reasons explained herein.

21 **I. BACKGROUND**

22 According to its motion for summary judgment, Plaintiff 3M Company is a leading  
23 manufacturer of N95 respirators and personal protective equipment ("PPE") that shields users  
24 from exposure to airborne particulars, including viruses like COVID-19. (Dkt. No. 77 at 7–8.)  
25 During the COVID-19 pandemic, there was an increased demand for Plaintiff's products because  
26 they provided high levels of protection compared to many competitors. (*Id.* at 8.) Due to the

1 increased demand, and the general market frenzy that ensued during the early days of the  
 2 pandemic, Plaintiff undertook efforts to combat trademark counterfeiting, trademark  
 3 infringement, and other unlawful activities during the COVID-19 pandemic, including (1)  
 4 posting “on 3M’s website the per respirator, single case list price in the United States for the  
 5 most common models of its N95 respirators so that the public can identify and avoid inflated  
 6 pricing”; and (2) “[c]reating a website and telephone fraud hotlines in the United States for the  
 7 public to use to report suspected fraud, price-gouging, counterfeiting, and ensur[ing] products are  
 8 from 3M authorized distributors.” (*Id.* at 9–10.)

9 Defendants formed AIME LLC (“AIME”) in February 2020, one month prior to the  
 10 outbreak of the COVID-19 pandemic. (*Id.* at 10.) In the ensuing months, Defendants began  
 11 communicating with hospitals and government entities across North America with offers to sell  
 12 PPE. (*Id.*) Simultaneously, Defendants contacted third parties to try and source Plaintiff’s highly  
 13 sought-after PPE products. (*Id.*) Despite never actually purchasing any of Plaintiff’s N95s or  
 14 other PPE, (*id.*), Defendants represented to multiple potential clients that Defendants could  
 15 provide millions of 3M respirators. (*Id.* at 11.) At one point, they claimed to have acquired  
 16 25,000,000 3M masks, a claim belied by the fact that not even Plaintiff, the manufacturer of  
 17 these masks, was in possession of such a high quantity of masks. (*Id.*) Defendants offered these  
 18 products to potential clients at a rate above 3M’s listed price. (*Id.*) When potential clients  
 19 expressed disbelief at Defendants ability to source such a large quantity of 3M masks,  
 20 Defendants doubled down on their claims, alleging that they were in contact with a third party  
 21 who was negotiating a contract with Plaintiffs. (*Id.*)

22 Defendants provided a healthcare company with a list of proposed transaction steps that  
 23 explicitly included 3M’s alleged participation. (*Id.* at 12.) Defendants sent these steps to potential  
 24 clients with a document containing both 3M’s logo and Defendants own letterhead. (*Id.*)  
 25 Defendants claimed that 3M would be in direct contact with potential clients. (*Id.*) Plaintiff never  
 26 approved the use of their logo, trademark, or name in these negotiations. (*Id.*) Nonetheless,

1 Defendants sent the document that contained 3M’s marks to several potential customers, despite  
 2 admitting that they never had any 3M product in their possession, and that they never had contact  
 3 with an actual 3M employee. (*Id.* at 13.) These actions were not an isolated incident. (*Id.* at 14–  
 4 15.)

5 As a result of these actions, Plaintiff brought claims for trademark counterfeiting,  
 6 infringement, dilution, unfair competition, false endorsement, false delineation of origin, and  
 7 false advertising under the Lanham Act, 15 U.S.C. § 1125(a)(1)(A)) (herein after “Lanham  
 8 Act.”). (*See generally* Dkt. No. 1.) Defendants filed a counterclaim, alleging several different  
 9 charges. (*See generally* Dkt. No. 17.) The Court previously dismissed three counterclaims,  
 10 leaving only counts for malicious prosecution, abuse of process, tortious interference with  
 11 economic advantage, and claims under the Washington Consumer Protection Act. (*See generally*  
 12 Dkt. No. 34.)

## 13 II. DISCUSSION

### 14 A. Objections to Judge Tsuchida’s Orders

#### 15 1. Discovery Sanctions

16 On February 13, 2023, Judge Tsuchida granted Plaintiff’s motion for discovery sanctions.  
 17 (Dkt. No. 103.) Judge Tsuchida found that Defendants violated and abused the Court’s orders  
 18 and discovery process in a “repeated, intentional, and egregious” fashion. (*Id.* at 1.) Accordingly,  
 19 Judge Tsuchida ruled that Defendants are “precluded from presenting or relying on evidence  
 20 produced after the November 23, 2022 discovery deadline, and 3M is entitled to an adverse  
 21 inference against defendants related to any responses and materials that were not produced prior  
 22 to the discovery deadline.” (*Id.* at 1–2.) Additionally, Judge Tsuchida ordered Defendants’  
 23 attorneys R. Gale Porter and Richard R. Ross to pay monetary sanctions for the costs and fees  
 24 incurred by Plaintiff in bringing the discovery motion. (*Id.* at 8.)

25 Defendants filed a motion for reconsideration pursuant to LCR 7(h). (Dkt. No. 108.)  
 26 Judge Tsuchida denied the motion on the grounds that Defendants, “failed to demonstrate

1 manifest error in the Discovery Sanctions Order or new facts or legal authority that could not  
2 have been brought to its attention earlier with reasonable diligence.” (Dkt. No. 118 at 2.)<sup>1</sup>  
3 Defendants subsequently filed objections to Judge Tsuchida’s orders imposing discovery  
4 sanctions. (Dkt. Nos. 112, 122.) Such objections are reviewed under the “clearly erroneous or  
5 contrary to law” standard set forth in 28 U.S.C. § 636(b)(1)(A) and Federal Rule of Civil  
6 Procedure 72(a).

7 The Court concludes that Judge Tsuchida’s discovery orders were not clearly erroneous  
8 because he cites to the specific facts that demonstrates Defendants’ improper conduct during the  
9 discovery process, (Dkt. Nos. 103 at 3–9; 118 at 3–5); and the orders are not contrary to law  
10 because he correctly applied the controlling legal standards to Defendants’ claims. (*See id.*) For  
11 those reasons, the Court OVERRULES Defendants’ objections (Dkt. Nos. 112, 122.)

12       2. Motion to Withdraw

13 On February 9, 2023, Judge Brian Tsuchida denied Defendants’ motions to withdraw  
14 with leave to renew the motions, if necessary, after the assigned district court judge resolved the  
15 pending summary judgement motion. (*See generally* Dkt. No. 102.) Defendants objected to the  
16 order, arguing that it was erroneous and contrary to law. (Dkt. No. 125.) Given the Court’s  
17 disposition of this matter in the present order, *see infra* Part II.B., the objections are DENIED as  
18 moot. None of the information at issue in the motions to withdraw impacted the Court’s holding  
19 below.

20       B.     Summary Judgement

21       1. Legal Standard

22       “The court shall grant summary judgment if the movant shows that there is no genuine  
23 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.  
24 Civ. P. 56(a). In making such a determination, the Court must view the facts in the light most

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<sup>1</sup> Although he denied the motion, Judge Tsuchida struck statements from his previous  
order related to the possible spoliation of evidence. (Dkt. No. 118 at 1.)

1 favorable to the nonmoving party and draw justifiable inferences in that party's favor. *Anderson v.*  
 2 *Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Once a motion for summary judgment is properly  
 3 made and supported, the opposing party "must come forward with 'specific facts showing that  
 4 there is a genuine issue for trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S.  
 5 574, 587 (1986). Ultimately, summary judgment is appropriate against a party who "fails to make a  
 6 showing sufficient to establish the existence of an element essential to that party's case, and on  
 7 which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322  
 8 (1986).

9       Regarding the contents of the record on summary judgment, the Court "need only  
 10 consider *the cited materials.*" Fed. R. Civ. P. 56(c)(3) (emphasis added). It does not have "to  
 11 comb through the record to find some reason to deny a motion for summary judgment." *Gordon*  
 12 *v. Virtumundo, Inc.*, 575 F.3d 1040, 1058 (9th Cir. 2009). Nor may the nonmovant stand on  
 13 allegations in the complaint, unsupported conjecture, or conclusory statements. *Hernandez v.*  
 14 *Spacelabs Med. Inc.*, 343 F.3d 1107, 1112 (9th Cir. 2003). In addition, conclusory, non-specific  
 15 statements in affidavits are not sufficient, and "missing facts" will not be "presumed." *Lujan v.*  
 16 *Nat'l Wildlife Fed'n*, 497 U.S. 871, 888–89 (1990). Also, the facts relied on must be admissible  
 17 under rules governing admission of evidence generally. *Hal Roach Studios, Inc. v. Richard*  
 18 *Feiner & Co., Inc.*, 896 F.2d 1542, 1555 (9th Cir. 1990). And finally, affidavits or declarations  
 19 supporting or opposing summary judgment must "set out facts that would be admissible in  
 20 evidence." Fed. R. Civ. P. 56(c)(4).

21           2. Defendants' Counterclaims

22           a. Damages

23       Proof of damages is relevant to virtually all of Defendants' counterclaims. (Dkt. No. 17 at  
 24 21–24.) As Plaintiff indicates, Defendants have failed to provide "any evidence of damages  
 25 resulting from their alleged claims other than vague and unsubstantiated statements." (Dkt. No.  
 26

1 77 at 26.)<sup>2</sup> There is no proof “Defendants ever actually had product to sell, or that their cost to  
 2 manufacture the product would have allowed them to make a profitable sale to any prospects.”  
 3 (*Id.*) Defendants’ response, in its entirety, is: “See Bingham declaration and attached answers to  
 4 interrogatories that affirm they genuinely suffered financial loss. Moreover, damage to reputation  
 5 can also be inferred.” (Dkt. No. 89 at 5.)

6 While brevity is appreciated by the Court, the Court will not “comb through the record”  
 7 to affirm Defendants’ damages claim. *Gordon*, 575 F.3d 1058. The cite to “Bingham’s  
 8 declaration,” without reference to paragraph, page, or exhibit number, does not demonstrate  
 9 financial loss. For good measure, the Court reviewed the declaration in its entirety, and found  
 10 that it lacks any admissible evidence to support damages. (*See generally* Dkt. No. 90.) Instead, it  
 11 is replete with inadmissible self-serving assertions. *See Lujan*, 497 U.S. at 888–89. And the one  
 12 statement asserting damages references the interrogatories that were produced after the  
 13 November 23, 2022, discovery deadline. (Dkt. No. 89 at 5.) Per the Court’s previous order, (*see*  
 14 *supra* Part II.A.1), these interrogatories will not be considered. Accordingly, the Court finds that  
 15 an essential element of Defendants’ counterclaims is missing. Nonetheless, the Court will discuss  
 16 the merits of each individual counterclaim below.<sup>3</sup>

17                   **b. Malicious Prosecution**

18 Defendants assert a counterclaim for malicious prosecution. (Dkt. No. 17 at 21.) “Actions  
 19 for malicious prosecution are not favored in the law[.]” *Clark v. Baines*, 84 P.3d 245, 248 (2004).

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20                   <sup>2</sup> When the nonmoving party bears the burden of proof, the movant “can prevail merely  
 21 by pointing out that there is an absence of evidence to support the nonmoving party’s case.”  
 22 *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). When this occurs, the non-  
 23 moving party must provide “specific facts showing that there is a genuine issue for trial.”  
*Anderson*, 477 U.S. at 250.

24                   <sup>3</sup> In Defendants response brief, they make repeated conclusory assertions unsupported by  
 25 facts on the record and/or they rely on inadmissible evidence. The Court reminds Defendants  
 26 that, in a ruling on a motion for summary judgment, it may only consider admissible evidence.  
*Orr v. Bank of Am.*, 285 F.3d 764, 773 (9th Cir. 2002); Fed. R. Civ. P. 56(c)(2).

1 To survive summary judgment, Defendants must put forth evidence to show that Plaintiff (1) did  
 2 not have probable cause; (2) initiated this action with malice; and that (3) Defendants were  
 3 injured from this action. (*Id.*) In order to establish malice, Defendants must provide evidence that  
 4 Plaintiff engaged in affirmative acts demonstrating “improper or wrongful motives or [a]  
 5 reckless disregard.” *Turngren v. King County*, 705 P.2d 258, 266 (Wash. 1985). Because this is a  
 6 civil action, Defendants must also put forth evidence demonstrating, “arrest or seizure of  
 7 property” and “special injury (meaning injury which would not necessarily result from similar  
 8 causes of action).” *Clark*, 84 P.3d at 249.

9 Defendants concede “there was no arrest” of property, but they claim that “the loss of  
 10 their business interest and property in not being able to sell their goods as well as damage to  
 11 reputation would apply to show lost property interests and suffered special injury.” (Dkt. No. 89  
 12 at 3.) As explained above in the discussion on damages, Defendants provide *no* material to  
 13 support this claim. Therefore, this conclusory statement, absent additional evidence, will not be  
 14 considered by the Court. *See T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626,  
 15 630 (9th Cir. 1987).

16 Defendants rely on similarly unsupported conclusory statements to argue that a question  
 17 of fact exists whether Plaintiff had probable cause and/or acted with malice. (Dkt. No. 77 at 3–4.)  
 18 Simply saying “[t]here was no basis for the claims of fraud as [Plaintiff] asserted in its complaint  
 19 and they knew it” does not make it so. (*Id.*) The single citation to the record, “See Bingham  
 20 declaration [sic]” does not adequately support this claim, and as the Court previously explained,  
 21 uncorroborated, self-serving testimony does not create a factual dispute precluding summary  
 22 judgment. *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002).

23 Accordingly, there is insufficient evidence to establish a genuine issue of material fact for  
 24 Defendants’ malicious prosecution claim. Therefore, the Court GRANTS summary judgment to  
 25 Plaintiff on Defendants’ malicious prosecution claim.  
 26

1                           c. *Abuse of Process*

2                           Defendants next assert a counterclaim for abuse of process. (Dkt. No. 17 at 22.) To  
 3 succeed on such a claim, the moving party must prove: (1) an ulterior purpose to accomplish an  
 4 object not within the proper scope of the process, (2) an act not proper in the regular prosecution  
 5 of proceedings, and (3) harm caused by the abuse of process. *Bellevue Farm Owners Ass'n v.*  
 6 *Stevens*, 394 P.3d 1018, 1019 (Wash. Ct. App. 2017). The mere act of filing a lawsuit with a  
 7 malicious motive is not sufficient to make out a claim for abuse of process. *Sea-Pac Co. v.*  
 8 *United Food & Commercial Workers Local Union 44*, 699 P.2d 217, 221 (Wash. 1985). “[T]here  
 9 must be an act after filing suit using legal process empowered by that suit to accomplish an end  
 10 not within the purview of the suit.” *Batten v. Abrams*, 626 P.2d 984, 990 (Wash. Ct. App. 1981).

11                          Defendants support their abuse of process claim with, “the same foregoing reasons and  
 12 facts” as their malicious prosecution claim. (Dkt. No. 89 at 4.) That is to say, there is once again  
 13 no facts to support Plaintiffs claim. In fact, there’s even less factual support for Defendants’  
 14 assertions here, because there is no citation to the factual record at all, let alone an unsupported  
 15 one. (*Id.*) In short, Defendants have not identified, much less supported with admissible  
 16 evidence, any facts that show a genuine dispute whether Plaintiff undertook this action with an  
 17 ulterior purpose; whether it committed any improper acts during the prosecution of the lawsuit;  
 18 or whether Defendants were harmed as a result of Plaintiff’s litigation conduct. (*Id.*) Therefore,  
 19 the Court GRANTS summary judgment to Plaintiff on Defendants’ abuse of process claim.

20                          d. *Consumer Protection Act Claim*

21                          Defendants also assert a counterclaim for violation of Washington’s Consumer Protection  
 22 Act (“CPA”). (Dkt. No. 17 at 24.) To state a claim under the CPA, a moving party must  
 23 demonstrate (1) an unfair or deceptive act or practice, (2) in trade or commerce, (3) impacting  
 24 the public interest, (4) an injury to the plaintiff’s business or property, and (5) legal causation.  
 25 *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 719 P.2d 531, 533 (Wash. 1986).

26                          Defendants’ CPA claims fail because there is no evidence to satisfy any of the *Hangman*

1 *Ridge* requirements. Defendants once again reiterate their unsupported conclusions, asking the  
 2 Court to consider their “belief” as evidence of disputed fact. (Dkt. No. 89 at 4.) The Court cannot  
 3 do so. *See Hernandez*, 343 F.3d at 1112. Therefore, the Court GRANTS summary judgment to  
 4 Plaintiff on Defendants’ Consumer Protection Act claim.

5                   e. *Tortious Interference with Prospective Economic Advantage*

6 Finally, Defendants assert a counterclaim for tortious interference with prospective  
 7 economic advantage (Dkt. No. 17 at 24.) To plead tortious interference, a plaintiff must show:  
 8 “(1) the existence of a valid contractual relationship or business expectancy; (2) that defendants  
 9 had knowledge of that relationship; (3) an intentional interference inducing or causing a breach  
 10 or termination of the relationship or expectancy; (4) that defendants interfered for an improper  
 11 purpose or used improper means; and (5) resultant damage.” *Leingang v. Pierce Cty. Med.*  
 12 *Bureau, Inc.*, 930 P.2d 288, 300 (Wash. 1997).

13 Defendants once again ask the Court to presume the truth of their assertions based on  
 14 mere belief and conjecture. (Dkt. No. 89 at 4.) Moreover, Defendants concede to an essential  
 15 element of the counterclaim: “AIME agrees there was no reasonable business expectation.” (*Id.*  
 16 at 5.) Without such an allegation, Defendants cannot state a claim for tortious interference. *See*  
 17 *Leingang*, 930 P.2d at 300. Therefore, the Court GRANTS summary judgment to Plaintiff on  
 18 Defendants’ tortious interference with prospective economic advantage claim.

19                   3. Plaintiff’s Claims

20                   a. *Trademark Infringement and use of Counterfeit Marks*

21 Plaintiff asserts a claim for trademark infringement under the Lanham Act. (Dkt. No. 77  
 22 at 27.) Such a claim may be based on the use of a trademark that is likely to cause confusion, or  
 23 to cause mistake, or to deceive as to the affiliation, connection, or association of one person with  
 24 another person. *See Suarez Corp. Industries v. Earthwise Techs., Inc.*, 636 F. Supp. 2d 1139,  
 25 1145 (W.D. Wash. 2008); 15 U.S.C. §§ 1114. “A successful trademark infringement claim under  
 26 the Lanham Act requires a showing that the claimant holds a protectable mark, and that the

1 alleged infringer's imitating mark is similar enough to cause confusion, or to cause mistake, or to  
 2 deceive." *Surfvivor Media, Inc. v. Survivor Prods.*, 406 F.3d 625, 630 (9th Cir. 2005).

3 It is undisputed that Plaintiff's logo is a protected trademark. (Dkt. No. 77 at 27.) Based  
 4 on the evidence before the court, it is beyond reasonable dispute that Defendants used Plaintiff's  
 5 name and logo, recognizable symbols associated with the Plaintiff, in connection with offers to  
 6 sell goods, namely 3M N95 respirators, that they did not have (*Id.* at 11, 13). Defendants  
 7 admitted they sent a document containing Plaintiff's trademark to potential customers.<sup>4</sup> (Dkt.  
 8 Nos. 78-1 at 2, 78-12.) Now, they attempt to claw this admission back with new proffered  
 9 evidence. (Dkt. No. 89 at 5.) The Court will not allow Defendants to circumnavigate the  
 10 discovery process—and the Court's previous orders. Therefore, the Court will consider the  
 11 admission that Defendants sent a document containing Plaintiff's trademark as fact. *Conlon v.*  
 12 *United States*, 474 F.3d 616, 621–23 (9th Cir. 2007) (holding that matters deemed admitted, even  
 13 by default, may be relied on for summary judgment.) This usage caused confusion in the  
 14 marketplace, to the detriment of both business and public health interests. (Dkt. No. 77 at 11.)  
 15 Accordingly, Defendants use of Plaintiff's trademark, without its consent, easily satisfies the  
 16 elements of trademark infringement under the Lanham Act. *See Arcona, Inc., v. Farmacy*  
 17 *Beauty, LLC*, 976 F.3d 1074, 1078 (9th Cir. 2020).

18 In the face of an otherwise clear trademark violation, Defendants assert that their conduct  
 19 falls within the "first sale" exception. (Dkt. No. 89 at 6.) This is an affirmative defense which  
 20 provides that "the owner of a particular copy . . . lawfully made under this title, or any person  
 21 authorized by such owner, is entitled, without the authority of the copyright owner, to sell or  
 22 otherwise dispose of the possession of that copy . . ." 17 U.S.C. § 109(a). Courts have  
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24 <sup>4</sup> Plaintiff served Requests for Admission on October 7, 2022. (Dkt. No. 78.) Defendants  
 25 did not timely respond to those requests, due on or before November 11, 2022. (*Id.*) "Failure to  
 26 timely respond to requests for admissions results in automatic admission of the matters  
 requested." *Wilson v. JPMorgan Chase, N.A.*, 2020 WL 885971, slip op. at 2 (W.D. Wash.  
 2020).

1 interpreted this language to mean that, “only . . . the first sale of the copyrighted work” is  
 2 entitled to protection. *See Vernor v. Autodesk, Inc.*, 621 F.3d 1102, 1107 (9th Cir. 2010) (“[A]  
 3 copyright owner’s exclusive distribution right is exhausted after the owner’s first sale of a  
 4 particular copy of the copyrighted work.”).

5 For obvious reasons, this exception does not apply here. Plaintiffs do not seek to limit the  
 6 resale or reproduction of their goods. Defendants have never actually owned or sold any of  
 7 Plaintiff’s goods. Instead, the issue is Defendants’ unauthorized use of Plaintiff’s trademarks to  
 8 represent an affiliation with Plaintiff that did not exist, and an ability to produce goods that  
 9 Defendants did not have. As these facts are beyond dispute, the Court GRANTS Plaintiff  
 10 judgment as a matter of law on its trademark infringement and use of counterfeit marks claim.

11                   b. *Unfair Competition, False Endorsement, False Association or False*  
 12 *Designation of Origin Under 15 U.S.C. § 1125(a) and False*  
*Advertising Under U.S.C. § 1125(a)(1)(B)*

13 Plaintiff also asserts an unfair competition, false endorsement, or false designation of  
 14 origin claim under 15 U.S.C. § 1125 (a). (Dkt. No. 77 at 28.) To prevail on this claim, Plaintiff  
 15 must prove that Defendants, “in connection with any goods or services, or any container for  
 16 goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof,  
 17 or any false designation of origin, false or misleading description of fact, or false or misleading  
 18 representation of fact.” 15 U.S.C. § 1125 (a)(1). A false advertising claim under § 1125 (a)(1)(B)  
 19 requires similar proof, plus that the defendant “in commercial advertising or promotion,  
 20 misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another  
 21 person’s goods, services, or commercial activities.” To prevail, Plaintiff must establish that  
 22 Defendants’ advertisements were false or misleading and had the capacity to deceive consumers.  
 23 *See TrafficSchool.com, Inc. v. Edriver Inc.*, 653 F.3d 820, 828–29 (9th Cir. 2011).

24 As noted above, many of these facts were already established. It is clear from the record  
 25 that Defendants used Plaintiff’s trademark to advertise goods they never possessed, and that the  
 26 purpose of this use was to generate business contracts with potential customers. “Where evidence

1 shows that one company deliberately adopted another's name to obtain advantage from the  
2 other's good will, we may infer a likelihood of confusion." *Acad. Of Motion Picture Arts and*  
3 *Sci. v. Creative House Promotions*, 944 F.2d 1446, 1456 (9th Cir. 1991). Defendants'  
4 representations of their ability to supply millions of 3M respirators at inflated prices, despite not  
5 having any in stock, constitutes false advertising. They misrepresented the nature and origin of  
6 their goods in commercial promotion, violating 15 U.S.C. § 1125 (a)(1)(B).

7 As Plaintiff succinctly put it, Defendants "sent emails misrepresenting that they were  
8 working directly with 3M, in contact with 3M lawyers, that 3M approved of and supported  
9 Defendants' sales practices, that 3M would deliver the products, and that 3M set the prices.  
10 Defendants further used fake documents bearing 3M's name and/or the 3M Marks to support  
11 these misrepresentations." (Dkt. No. 77 at 30.) This is supported by evidence. (Dkt. Nos. 78, 79.)  
12 Defendants do not provide any admissible assertions to dispute these assertions. (See Dkt. No. 89  
13 at 7.)

14 Accordingly, the Court GRANTS Plaintiff judgment as a matter of law on the unfair  
15 competition, false endorsement, false association or false designation of origin claim under  
16 § 1125(a) and the false advertising claim under § 1125(a)(1)(B).

17 **III. CONCLUSION**

18 For the foregoing reasons, the Court GRANTS Plaintiff's Motion for Summary  
19 Judgement (Dkt. No. 77), OVERRULES Defendants' objections to the discovery orders (Dkt.  
20 Nos. 112, 122) and STRIKES as moot Defendants' objections to the withdrawals order (Dkt. No.  
21 125).

22 DATED this 7th day of June.

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John C. Coughenour  
UNITED STATES DISTRICT JUDGE